

**PT 99-32**

**Tax Type: PROPERTY TAX**

**Issue: Religious Ownership/Use**

**STATE OF ILLINOIS  
DEPARTMENT OF REVENUE  
OFFICE OF ADMINISTRATIVE HEARINGS  
SPRINGFIELD, ILLINOIS**

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<b>ALPHA AND OMEGA CHURCH</b>	)		
<b>OF JESUS CHRIST</b>	)	<b>A.H. Docket #</b>	<b>98-PT-0048</b>
<b>Applicant</b>	)		
	)	<b>Docket #</b>	<b>97-10-156</b>
<b>v.</b>	)		
	)	<b>Parcel Index #</b>	<b>91-21-07-204-007</b>
<b>THE DEPARTMENT OF REVENUE</b>	)		
<b>OF THE STATE OF ILLINOIS</b>	)		

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**RECOMMENDATION FOR DISPOSITION**

**Synopsis:**

The hearing in this matter was held at the Willard Ice Building, 101 West Jefferson Street, Springfield, Illinois, on October 21, 1998, to determine whether or not Champaign County Parcel Index No. 91-21-07-204-007 qualified for exemption from real estate taxation for the 1997 assessment year.

Mr. Fredrick L. Wallace, treasurer of the Alpha and Omega Church of Jesus Christ (hereinafter referred to as the "Church") and Rev. Edward T. McGhee, pastor of the church were present and testified on behalf of the church.

The issues in this matter include, first, whether the church is a religious organization; secondly, whether the church owned this parcel during the 1997 assessment year; and lastly, whether the church used this parcel for primarily religious purposes during the 1997 assessment year.

Following the submission of all of the evidence and a review of the record, it is determined that the church is a religious organization. It is also determined that the church owned this parcel during the entire 1997 assessment year. Finally, it is determined that this parcel was not used primarily for religious purposes during the 1997 assessment year.

Findings of Fact:

1. The jurisdiction and position of the Illinois Department of Revenue (hereinafter referred to as the “Department”) in this matter, namely that this parcel did not qualify for exemption for the 1997 assessment year, was established by the admission in evidence of Department’s Exhibit Nos. 1 through 6A.

2. On December 20, 1997, the Champaign County Board of Review transmitted to the Department an Application for Property Tax Exemption To Board of Review concerning the parcel here in issue for the 1997 assessment year. (Dept. Ex. No. 2)

3. On April 30, 1998, the Department advised the church that it was denying the exemption of this parcel because said parcel was not primarily in exempt use. (Dept. Ex. No. 3)

4. On May 11, 1998, the secretary of the church, Nadine Lee, requested a formal hearing in this matter. (Dept. Ex. No. 4)

5. The hearing in this matter conducted on October 21, 1998, was held pursuant to that request. (Dept. Ex. No. 5)

6. At the pretrial conference in this matter, the Administrative Law Judge advised Mr. Wallace that it would be appropriate for the church to be represented by legal counsel at the hearing. Mr. Wallace stated at the hearing that the church wished to proceed without counsel. (Tr. p. 7)

7. The church acquired the parcel here in issue pursuant to a trustee’s deed dated April 18, 1988. (Dept. Ex. No. 2B)

8. The church’s sanctuary building during 1997 was located at 400 West Bradley Avenue in Champaign, Illinois. The church’s sanctuary is five miles from the parcel here in

issue. The parcel here in issue is located at 1200 West Beardsley in Urbana, Illinois. (Tr. pp. 7 & 9, Dept. Ex. No. 2)

9. During 1997, the church held religious services at the church sanctuary at 400 West Bradley on Sunday mornings at 11:00 AM and Sunday school at 9:30 AM. The church also held Sunday evening services at 400 West Bradley at 6:00 PM. Wednesday evening services were held at the sanctuary at 7:30 PM during 1997. (Tr. p. 8)

10. During 1997, there were approximately 250 to 300 members of the church. (Tr. p. 8)

11. During 1997, the parcel here in issue was a vacant parcel planted in grass. This parcel measured 548 feet by 366 feet excluding an area which measured 100 feet by 150 feet. (Tr. p. 8)

12. The church, during 1997, paid a contractor to mow the parcel here in issue. (Tr. p. 9)

13. During June of 1997 the church held a revival on the parcel here in issue on a Wednesday, a Thursday, and a Friday evening. A tent without sides was set up and approximately 150 chairs were set out for the revival. The people attending this revival also parked on this parcel on those three evenings (Tr. pp. 11 & 12)

14. During the week which included July 4, 1997, the church held its children's Vacation Bible School at the church sanctuary at 400 West Bradley. At about noon on Friday of that Vacation Bible School week, the church brought the children attending the Bible School to the parcel here in issue for a picnic. The children were on this parcel for approximately two hours for their picnic which was followed by a time for games and other recreation. (Tr. p. 13)

15. The last event which the church held on the parcel here in issue was a festival fun day on September 25, 1997. The festival fun day began about 10:00 AM and ended about 7:00 PM and included a garage sale and various games for the kids. (Tr. pp. 9 & 10)

16. During 1997 there was no permanent sign on the parcel here in issue stating who owned the property. Shortly after the church purchased the parcel here in issue during 1988 the church put up a sign on this parcel which said "Future Site of Alpha and Omega Church". That

sign was on the property for several years. The sign was removed after the church purchased its present sanctuary property at 400 West Bradley, Champaign, Illinois. (Tr. p. 15)

17. I take Administrative Notice that the Department granted an exemption to the church for the 400 W. Bradley property beginning on January 1, 1992 in Docket No. 92-10-198.

Conclusions of Law:

Article IX, Section 6, of the Illinois Constitution of 1970, provides in part as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

This provision is not self-executing but merely authorizes the General Assembly to enact legislation that exempts property within the constitutional limitations imposed. City of Chicago v. Illinois Department of Revenue, 147 Ill.2d 484 (1992).

Concerning property used for religious purposes, 35 ILCS 200/15-40 provides in part as follows:

All property used exclusively for religious purposes, or used exclusively for school and religious purposes, . . . not leased or otherwise used with a view to profit, is exempt, . . . .

It is well settled in Illinois that when a statute purports to grant an exemption from taxation, the fundamental rule of construction is that a tax exemption provision is to be construed strictly against the one who asserts the claim of exemption. International College of Surgeons v. Brenza, 8 Ill.2d 141 (1956); Milward v. Paschen, 16 Ill.2d 302 (1959); and Cook County Collector v. National College of Education, 41 Ill.App.3d 633 (1st Dist. 1976). Whenever doubt arises, it is to be resolved against exemption, and in favor of taxation. People ex rel. Goodman v. University of Illinois Foundation, 388 Ill. 363 (1944) and People ex rel. Lloyd v. University of Illinois, 357 Ill. 369 (1934). Finally, in ascertaining whether or not a property is statutorily tax exempt, the burden of establishing the right to the exemption is on the one who claims the exemption. MacMurray College v. Wright, 38 Ill.2d 272 (1967); Girl Scouts of DuPage County

Council, Inc. v. Department of Revenue, 189 Ill.App.3d 858 (2nd Dist. 1989) and Board of Certified Safety Professionals v. Johnson, 112 Ill.2d 542 (1986). It is therefore clear that the burden of proof in this matter is on the church.

Based on the decision issued in Docket 92-10-198, I conclude that the church is a religious organization. I further conclude that the church owned this parcel during the entire 1997 assessment year.

A religious purpose pursuant to the constitutional provision concerning exemption from taxation is a use of property by a religious society or organization as a place for worship, Sunday schools, and religious instruction. People ex rel. McCullough v. Deutsche Gemeinde, 249 Ill. 132 (1911). I therefore conclude that the revival and the afternoon Vacation Bible School picnic qualified as worship or religious instruction. These were the only activities described by the church's witnesses which took place on the parcel here in issue during 1997 and which qualified as religious uses of this parcel. During the remainder of the 1997 assessment year this parcel was either not used, or used for non-exempt purposes. The 1997 use of this parcel by the church for religious purposes, I conclude was only for a portion of four days out of 365 days and was therefore incidental. Where as here, the property as a whole was used for both exempt and nonexempt purposes, it will qualify for exemption only if the exempt use is the primary use, and the nonexempt use is merely incidental. Illinois Institute of Technology v. Skinner, 49 Ill.2d 59 (1971) and also MacMurray College v. Wright, 38 Ill.2d 272 (1967). It is therefore clear that the parcel here in issue was not primarily used for religious purposes during the 1997 assessment year.

In view of the testimony concerning the sign which had been on the parcel here in issue during the first several years that the church owned the property which stated "Future Site of the Alpha and Omega Church Of Jesus Christ", it should be pointed out that in the case of People ex rel. Pearsall v. The Catholic Bishop of Chicago, 311 Ill. 11 (1924), the Illinois Supreme Court held that the mere fact that a property was intended to be used for an exempt purpose was not sufficient to exempt said property. The Court required that the actual primary exempt use must

have begun for the property to be exempt. Also, in the case of Antioch Missionary Baptist Church v. Rosewell, 119 Ill.App.3d 981 (1<sup>st</sup> Dist. 1983), the Court held that property which was vacant and not used did not qualify for the statutory exemption as property used exclusively for religious purposes regardless of the owner's intent.

I therefore conclude that this parcel was not primarily used for religious purposes during the 1997 assessment year.

I therefore recommend that Champaign County Parcel Index No. 91-21-07-204-007 remain on the tax rolls for the 1997 assessment year and be assessed to the church, Alpha and Omega Church of Jesus Christ, the owner thereof.

Respectfully Submitted,

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George H. Nafziger  
Administrative Law Judge  
March 15, 1999